STATE OF MICHIGAN
IN THE SUPREME COURT FOR THE STATE OF MICHIGAN

CASE NO. 155196
COA: 329632

WASHTENAW COUNTY CIRCUIT COURT CASE NO. 15-427-CZ

MICHIGAN GUN OWNERS, INC. and ULYSSES WONG, an individual,

Appellants,

v

ANN ARBOR PUBLIC SCHOOLS and
JEANICE K. SWIFT, an individual,

Appellees,

On Appeal from the Court of Appeals for the State of Michigan

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DEFENDANTS-APPELLEES' ANSWER TO PLAINTIFFS-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

Oral Argument Requested

Proof of Service

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Michigan Cases

Michigan Statutes

Michigan Court Rules

Michigan Constitution

Federal Cases

Federal Statutes

United States Constitution

Other Authorities

JURISDICTIONAL STATEMENT AND STATEMENT IDENTIFYING JUDGMENT APPEALED

Appellees Ann Arbor Public Schools and Superintendent Jeanice Swift (collectively, the "District") agree that this Court has jurisdiction pursuant to MCR 7.303(B)(1). However, the District disagrees with Appellants' Michigan Gun Owners, Inc. and Ulysses Wong (collectively, the "Appellants") assertion that there are grounds to decide this appeal pursuant to MCR 7.305(B)(2), MCR 7.305(B)(3), MCR 7.305(B)(5)(a) & MCR 7.305(B)(5)(b).

On September 24, 2015, Washtenaw County Circuit Court Judge Carol Kuhnke entered an order granting the District's motion for summary disposition and dismissed the Appellant's complaint with prejudice. On December 15, 2016, the Court of Appeals issued an opinion upholding Judge Kuhnke's decision. Appellants filed their application for leave to appeal on January 25, 2017. The District respectfully requests that this Court deny Appellants' application for leave to appeal for the reasons set forth below.

STANDARD OF REVIEW

Appellants' Application for Leave to Appeal should be denied, for it fails to meet the standards enumerated in MCR 7.302(B). Appellants' Application for Leave to Appeal cites to and states its argument for why leave should be granted under MCR 7.302(B), but spends the bulk of its time rearguing the merits rather than discussing why this Court should hear its appeal. See Appellants' Brief in Support of Application for Leave to Appeal to the Michigan Supreme Court (January 26, 2017) (hereinafter "Appellants' Brief").

The District disagrees with Appellants' assertion that the order was "presumably based upon MCR 2.116(C)(9)," which provides that summary disposition is appropriate when "[t]he opposing party has failed to state a valid defense to the claim asserted against him or her." (See Appellants' Brief, p 5). MCR 2.116(C)(9) is inapplicable. Rather, the District moved for

summary disposition pursuant to MCR 2.116(C)(8) (Appellants failed to state a claim) and (C)(10) (no genuine issue of material fact and the District is entitled to judgment as a matter of law). The trial court granted the District's motion on one of these grounds. The grant or denial of summary disposition is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 119 (1999). In addition, the proper interpretation of a statute is a question of law that is reviewed de novo. *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 97 (2008).

COUNTERSTATEMENT OF QUESTIONS PRESENTED

I. HAS THE STATE LEGISLATURE COMPLETELY PREEMPTED THE FIELD OF FIREARM REGULATION SUCH THAT ANN ARBOR PUBLIC SCHOOLS CANNOT PROMULGATE POLICIES REGULATING FIREARMS ON SCHOOL PROPERTY IN ORDER TO PROTECT THE SAFETY AND WELFARE OF ITS STUDENTS, OR DOES THE DISTRICT HAVE THE AUTHORITY TO PROMULGATE SUCH POLICIES, GIVEN:

   A. THE DISTRICT'S POWER AND DUTY UNDER THE REVISED SCHOOL CODE TO PROVIDE FOR THE SAFETY AND WELFARE OF STUDENTS;

   B. THE LONGSTANDING AUTHORITY OF SCHOOLS TO PLACE LIMITS ON EVEN THE MOST FUNDAMENTAL RIGHTS IN ORDER TO PREVENT MATERIAL DISRUPTION TO THE EDUCATIONAL PROCESS;

   C. THE RIGHT OF SCHOOL DISTRICTS TO REGULATE VISITOR ACCESS TO SCHOOL PROPERTY;

   D. THE FACT THAT AN INDIVIDUAL'S SECOND AMENDMENT RIGHTS ARE NOT LIMITLESS; AND

   E. THAT APPLICATION OF THE *LLEWELLYN* FACTORS DOES NOT LEAD TO THE CONCLUSION THAT STATE LAW OCCUPIES THIS FIELD TO THE EXCLUSION OF SCHOOL DISTRICTS?

   The trial court answered "NO."

   Appellees agree the answer should be "NO."

INTRODUCTION

The District respectfully requests that this Honorable Court deny Appellants' application for leave to appeal. The Circuit Court and the Court of Appeals properly denied Appellants' request for declaratory relief, which would have allowed individuals to openly carry firearms in the District's elementary schools, middle schools, and high schools. The recent tragedy at Sandy Hook Elementary School in Newtown, Connecticut demonstrates the harmful effects guns have on the educational community. There have been approximately 159 school shootings since the April 20, 1999, mass shooting at Columbine High School in Colorado. In the two years following the December 14, 2012 mass shooting at Sandy Hook Elementary, there were approximately 94 school shootings.[1]

On April 15, 2015, the District, through its Board of Education (the "Board"), exercised its right, power, and duty under the Revised School Code to educate students and provide for their safety and welfare by enacting policies that prohibit possession of firearms on school property. See MCL 380.11a.[2] Michigan Gun Owners, Incorporated and Ulysses Wong ("Appellants"), assert that the District was preempted from promulgating the policies at issue because state law both expressly conflicts with the District's policies and because the state statutory scheme occupies the field of firearm regulation. As argued further below, the District was not expressly preempted from enacting the policies at issue because no state law expressly permits the open carrying of firearms on school property, and no state law expressly prohibits school districts from regulating in this area. In addition, the state statutory scheme has not

[1] Including fatal and nonfatal assaults, suicides, and unintentional shootings. *Analysis of School Shootings*, Everytown for Gun Safety, p 1 (December 9, 2014), available at http://everytown.org/documents/2014/10/analysis-of-school-shootings.pdf.

[2] See Board Policy 5400: Safety, Injury & Emergencies, attached as ***Exhibit 1***; Board Policy 5410: Safety & Disruption-Free Environment, attached as ***Exhibit 2***; and Board Policy 5420: Dangerous Weapon and Disruption-Free Zones, attached as ***Exhibit 3***. The Board policies were included as Attachments 1 (Board Policy 5410), 2 (Board Policy 5420), and 3 (Board Policy 5400) to the District's Motion for Summary Disposition.

occupied the field of regulation in this area such that school districts are precluded from adopting policies that restrict the possession of firearms on school property.

The Legislature has conferred on school districts the power and duty to ensure the safety and welfare of students "while at school or a school sponsored activity or while en route to or from school or school sponsored activity." MCL 380.11a. Courts have traditionally found that school districts may place limits on even the most fundamental rights when necessary to prevent a material disruption to educational rights. The policies at issue here were intended, in part, to prevent the disruption that would ensue from the presence of individuals open carrying firearms in schools. School districts also have a right to regulate who may have access to school property. Finally, it is well settled that an individual's Second Amendment right to bear arms is not limitless, and reasonable restrictions on that right, such as those applied by the District's Board Policies, are permissible.

The relief requested by Appellants would allow individuals to openly carry firearms in the District's schools. The District's policies prohibiting the possession of firearms on school property are permissible not only because the District has the authority to enact such policies, but also because failing to do so creates an unsafe and disruptive environment. The Appellees respectfully request that this honorable Court deny Appellants' application for leave to appeal.

COUNTERSTATEMENT OF FACTS

On April 15, 2015, the Board enacted three policies to make District property "Dangerous Weapon & Disruption-Free Zones" in order to provide for the safety and welfare of students and to minimize material disruptions of the educational environment. Appellants argue that the District cannot limit their ability to open carry pistols on school property and challenged the three board policies.

Appellants' assertion that Ann Arbor Public Schools is a local unit of government pursuant to MCL 123.1101(a) is false and misleading. MCL 123.1101(a) clearly and unequivocally defines a local unit of government and that definition **does not include a public school.** As discussed further below in Section I(A), the Michigan Legislature did not include school districts in the definition of a local unit of government under that Act. See MCL 123.1101(b). In addition, Appellants cite MCL 169.209 for the proposition that the District is a local unit of government. (Appellants' Brief, p 9). This citation refers to the Michigan Campaign Finance Act, which defines a "local unit of government" as "a district, authority, county, city, village, township, board, school district, intermediate school district, or community college district." MCL 169.209(7). The District submits that the definition of a local unit of government under the Campaign Finance Act is irrelevant to the questions at issue here. Many Michigan laws refer to local units of government; some include definitions of this term and some do not; some definitions include school districts and some do not. See, e.g., MCL 28.117(a) (Uniform Forfeiture Reporting Act); MCL 123.381(a) (Joint Water Supply and Waste Disposal Systems Act); MCL 141.422d(4) (Uniform Budgeting and Accounting Act); MCL 460.933(e) (Property Assessed Clean Energy Act). For purposes of this appeal, only the meaning of a local unit of

government under the Michigan Firearms and Ammunition Act, MCL 123.1101, is relevant and school districts have been omitted by the Michigan Legislature.

A. Board Policies and Michigan Law

In Michigan, it is legal for an individual to carry a firearm[3] in public as long as the individual is at least 18 years old, carrying the firearm with lawful intent, and the firearm is not concealed. See MCL 750.234f; MCL 750.226; MCL 750.227(2). However, under the Michigan Weapon Free School Zone Act, it is a misdemeanor to possess a weapon in a weapon free school zone. MCL 750.237a(4). The Act defines "weapon free school zone" as "school property and a vehicle used by a school to transport students to or from school property." MCL 750.237a(6)(e). The prohibition does not apply to certain individuals, including peace officers, individuals employed or contracted by a school to provide security services for the school, and individuals "licensed by this state or another state to carry a concealed weapon." MCL 750.237a(5).[4]

The Michigan Firearms Act dictates the procedures under which an individual may obtain a concealed pistol license ("CPL") issued by the State of Michigan. See MCL 28.421a *et seq.* The Act also regulates where CPL-holders may carry a concealed weapon. It provides that an individual licensed to carry a concealed pistol shall not carry a concealed pistol on certain premises, including schools or school properties,[5] public or private child care centers, sports

[3] "Firearm" is defined under state law as "any weapon which will, is designed to, or may readily be converted to expel a projectile by action of an explosive." MCL 750.222(d).

[4] The Act also does not apply to non-students, aged 18 or older, who are transporting a student to or from school, if they are carrying an unloaded firearm in the trunk of their vehicle and (1) the firearm is an antique firearm and the individual is "en route to or from a hunting or target shooting area or function involving the exhibition, demonstration or sale of antique firearms," (2) the individual has "a valid Michigan hunting license or proof of valid membership in an organization having shooting range facilities, and while en route to or from a hunting or target shooting area," or (3) the individual is en route "from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business, or in moving goods from one place of abode or business to another place of abode or business." MCL 750.237a(5)(e).

[5] However, "a parent or legal guardian of a student of the school is not precluded from carrying a concealed pistol while in a vehicle on school property, if he or she is dropping the student off at the school or picking up the student from the school." MCL 28.425o(1)(a).

arenas or stadiums, bars or taverns licensed to serve alcohol, churches, synagogues, mosques, temples, hospitals, and college classrooms or dormitories. MCL 28.425o(1).

Appellants assert that the Michigan Firearms Act does not expressly prohibit open carrying a pistol on school property, so individuals with CPLs have the right to openly carry firearms on school property. The District disagrees. In light of the District's power and duty to provide for the safety and welfare of students, as well as the District's authority to regulate visitor access to school property and to minimize material disruption to the educational process, the Board enacted three policies to make school property "Dangerous Weapon & Disruption-Free Zones." (See Board Policies 5400, 5410, and 5420, attached as ***Exhibits 1, 2, and 3***, respectively). The policies, enacted on April 15, 2015 following public comment, speak for themselves, but in general, they provide the following.

All property owned or leased by the District are designated as "Dangerous Weapon & Disruption-Free Zones." (Board Policy 5410, attached ***as Exhibit 2***). This designation means that, in order to "maintain the least disruptive educational environment and to ensure the safety and welfare of students," no person in possession of a dangerous weapon will be allowed to remain on property owned or leased by the District "at any time when students are at school, en route to or from school, or at a school sponsored activity." The prohibition against possessing a dangerous weapon on school property applies to all individuals, including those who possess a valid CPL, except as expressly authorized under MCL 28.425o. (Board Policy 5420, attached as ***Exhibit 3***). Board Policy 5420 provides that a dangerous weapon includes a firearm (including a starter gun or pistol). The prohibition of possessing dangerous weapons "does not apply to officers duly sworn to and in good standing with public law enforcement agencies." (Board Policy 5420, attached ***Exhibit 3***).

Board Policy 5400 provides that the presence of a dangerous weapon on any property owned or leased by the District constitutes an emergency, in accordance with the Michigan Department of Education ("MDE") Emergency Planning Toolkit. The MDE includes a "weapon on campus" among its list of emergencies, along with other serious safety concerns such as fires, tornados, earthquakes, and chemical, biological, or nuclear exposure. During an emergency, the District may institute lockdown procedures, or close schools and cancel busing, classes run by the Department of Community Education and Recreation, and student and/or staff events, including activities occurring before, during, and after school. (Board Policy 5400, attached ***Exhibit 1***). Finally, Board Policy 5410 states that "in order to preserve order in the educational process [and] to protect students from potential harm," the Superintendent shall refuse access to school property to any person (students, employees, or members of the public) if the individual "causes either actual or a reasonable forecast of material disruption to the educational process." (Board Policy 5410, attached as ***Exhibit 2***).

B. Procedural History

On April 27, 2015, Appellants filed a complaint in Washtenaw Circuit Court seeking a declaratory order that the District "is not allowed to bar Ulysses Wong and all other similarly situated individuals from entering onto any Ann Arbor Public School building or property while engaged in lawful activities" and enjoining the District from "promulgating and enforcing any policy that is preempted by state law." (Appellants' Complaint, p 4). The District filed an answer to the complaint on May 15, 2015, and asked the court to dismiss the complaint and enter a judgment of no cause of action. (District's Answer, p 4).[6]

[6] In its order granting the District's Motion for Summary Disposition and Dismissing the Complaint, the court mistakenly states that Defendants filed a motion for summary disposition in lieu of an answer to the complaint. In fact, Defendants filed an answer and subsequently filed their motion for summary disposition.

On August 31, 2015, the District moved for summary disposition pursuant to MCR 2.116(C)(8) and/or MCR 2.116(C)(10) and asked the trial court to dismiss Appellants' complaint with prejudice. Appellants responded to the motion on September 13, 2015.

On September 23, 2015, the trial court heard arguments on the District's motion for summary disposition. (Hearing on the District's Motion for Summary Disposition, 9/23/2015 (hereinafter, "MSD Tr")). The court then found in favor of The District, reasoning that school districts are not included in the definition of a local unit of government in MCL 123.1101, which precludes local units of government from regulating firearms. (MSD Tr, p 21). Cases that have expanded that definition, like *Capital Area District Library v Michigan Open Carry, Inc*, 298 Mich App 220; 826 NW2d 736 (2012) ("*CADL*"), involved an entity under the control of a city and county, which were both included in the definition of a local unit of government under the statute. (MSD Tr, p 21). The court also noted that a school district's enabling legislation gives it the authority to restrict guns in schools. (MSD Tr, p 20). Finally, the court rejected Appellants' field preemption argument. (MSD Tr, pp 21-23). The Court reviewed the four factors provided in *People v Llewellyn*, 401 Mich 314; 257 NW2d 902 (1977) and concluded that (1) State law does not expressly preempt any further regulation by school districts; (2) Appellants did not show that preemption should be implied from the legislative history; (3) Michigan's gun regulations are already a patchwork of laws; and (4) the court would not assume that the nature of the regulated subject matter demands exclusive State regulation to achieve the uniformity necessary to serve the State's purpose and interest given that the Legislature has not expressly stated it is occupying this field of regulation and the Legislature has not cohesively occupied the field with a unified gun regulation act. (MSD Tr, pp 22-23).

On September 24, 2015, the court signed an order granting the District's motion for summary disposition and dismissing Appellants' complaint with prejudice, "for the reasons stated on the record." The order was entered in the Register of Actions on September 28, 2015. Appellants filed a timely claim of appeal with the Court of Appeals on October 12, 2015.

On December 13, 2016, the parties argued this case before a panel of the Michigan Court of Appeals. On December 15, 2016, the Court of Appeals issued a published opinion, ruling that state law does not preempt Ann Arbor Public School policies banning the possession of firearms and at school-sponsored events and affirmed the judgment of the circuit court. *Ann Arbor Public Schools v Michigan Gun Owners, Inc*, __ Mich App __; __ NW2d __ (2016) (Docket 329632).

ARGUMENT

I. ANN ARBOR PUBLIC SCHOOLS IS NOT EXPRESSLY PREEMPTED FROM REGULATING FIREARMS

Appellants assert that the District's weapons policies directly contradict MCL 28.425o. Appellants argue that with a "carve-out for concealed carry at school in compliance with the statute, a modified AAPS weapons policy might be permissible under the Revised School Code." As the Court of Appeals recognized, "AAPS policy 5420 specifically references and acknowledges that MCL 28.425o controls the ability of concealed pistol license holders to carry a concealed pistol under the distinct circumstances conforming to the statute." *Ann Arbor Public Schools*, __ Mich App at __; slip op at 5. Therefore, as conceded by Appellants and upheld by the Court of Appeals, the District's policies are permissible under the Revised School Code.

A local regulation is expressly preempted by state statute "when the local regulation permits what the statute prohibits or prohibits what the statute permits." *USA Cash # 1, Inc v City of Saginaw*, 285 Mich App 262, 267; 776 NW2d 346 (2009), quoting *McNeil v Charlevoix Co*, 275 Mich App 686, 697; 741 NW2d 27 (2007). However, "a local ordinance that regulates in an area where a statute also regulates, with mere differences in detail, is not rendered invalid due to conflict." *USA Cash*, 285 Mich App at 267. "As a general rule, additional regulation to that of a State law does not constitute a conflict therewith." *Id.*, quoting *Walsh v City of River Rouge*, 385 Mich 623, 636; 189 NW2d 318 (1971).

In the instant case, the District's Board policies prohibit individuals from carrying firearms on school property, and Board Policy 5420 provides:

> This prohibition does not apply to officers duly sworn to and in good standing with public law enforcement agencies. An individual who possesses a valid concealed pistol license is also prohibited from carrying a concealed pistol on the

> premises of a school or school property, except concealed carry as expressly authorized by MCL 28.425o.

As discussed below, these policies are *not* expressly preempted by state law because no state law expressly allows individuals to carry firearms on school property and no state law expressly precludes school districts from promulgating policies that regulate firearms on school property.

The Court of Appeals properly ruled that the District's policies were not expressly preempted by state law:

> Plaintiffs argue that because MCL 28.425o(1)(a) addresses the right of concealed pistol license holders to carry a concealed pistol on school property in certain circumstances, AAPS's policy banning weapons is expressly preempted.
>
> [. . .] MCL 28.425o(1)(a) imposes a blanket prohibition on carrying a concealed pistol on school grounds ("shall not") subject to certain specific and limited exceptions. The statute does not expressly forbid additional regulation, or declare that its subparts supersede any other school-related firearm rules. More to the point, AAPS policy 5420 specifically references and acknowledges that MCL 28.425o controls the ability of concealed pistol license holders to carry a concealed pistol under the distinct circumstances conforming to the statute. We find no conflict between the statute and the AAPS policies, and thus no express preemption. Moreover, as discussed in greater detail in the next section, this statute's virtually categorical limitation of the presence of weapons in educational settings strongly implies that the Legislature intended this enactment to curtail the carrying of weapons in public schools. [*Ann Arbor Public Schools*, __ Mich App at __; slip op at 5.

A. No State Law Expressly Permits the Open Carry of Firearms on School Property

There is no state law that expressly allows individuals with CPLs to openly carry firearms in schools and on school property. MCL 28.425o specifically prohibits an individual licensed to carry a concealed pistol from carrying a concealed pistol on a school or school property. MCL 28.425o(1)(a). It does not expressly allow CPL holders to open carry pistols on school property.

In fact, no provision in the Michigan Firearms Act, the weapon free school zone provisions of the Michigan Penal Code, or any other state or federal law expressly permits CPL holders to open carry pistols on school property. As the Court of Appeals pointed out, "there are 26 different laws specifically referencing "weapon free school zones. These four words telegraph an unmistakable objective regarding guns and schools." *Ann Arbor Public Schools,* __ Mich App at __; slip op at 9.

Appellants assert, "where the legislature has enacted laws allowing and regulating certain conduct, it is presumed that the legislature intended to *allow* that conduct and local ordinances and rules cannot completely disallow the same conduct." Appellants' Brief, p 17. However, Appellants fail to acknowledge that the Legislature has not enacted a law allowing open carry of firearms on school property. Appellants cite to several cases in which the Michigan Legislature had expressly provided for certain conduct to be allowed. In *National Amusement Co v Johnson,* 270 Mich 613; 259 NW 342 (1935) Appellants' Brief, p 17, a state statute expressly allowed endurance competitions if certain requirements were met. A local ordinance was enacted which prohibited endurance competitions. Thus, the Court held that the local ordinance was invalid. In *Michigan Restaurant Assn v City of Marquette,* 245 Mich App 63; 626 NW2d 418 (2001) Appellants' Brief, p 17, a state statute expressly allowed smoking in restaurants. A local ordinance was enacted which completely prohibited smoking in restaurants. Thus, the Court held that the local ordinance was invalid.

In the instant matter, the Legislature **has not enacted a statute which expressly permits individuals to carry a pistol onto school property**. This is unlike the facts of *National Amusement* and *Michigan Restaurant Assn* where state statutes expressly permitted what the local ordinances attempted to prohibit. If the Legislature intended to invite individuals to carry

firearms into elementary schools, middle schools, and high schools in this state, then they would have provided for the same.

B. School Districts are Not Expressly Preempted from Regulating Firearms under the Michigan Firearms and Ammunition Act

The Michigan Firearms and Ammunition Act does not expressly prohibit the District from enacting policies that regulate the possession of firearms in its schools by parents and visitors among its students. The Act provides:

> **A local unit of government** shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, **except as otherwise provided by federal law or a law of this state.** [MCL 123.1102 (emphasis added).]

The Act also defines "a local unit of government:"

> "Local unit of government" means a city, village, township, or county. [MCL 123.1101(b).]

While the statute expressly provides that cities, villages, townships, and counties may not regulate the possession of pistols or other firearms except as otherwise provided by state or federal law, the statute does not expressly prohibit school districts from enacting such regulation. See MCL 123.1102.

The Court of Appeals affirmed that Circuit Court Judge Kuhnke addressed the plain language of MCL 123.1101(b) and correctly stated the following regarding the legislature's definition of "local unit of government:"

> MCL 123.1101 does not include schools as a local unit of government and as I pointed out and I think Counsel acknowledges, the Legislature knows very well ah - - how to include the schools if it means to and at 123.11011B local unit of government is specifically defined as a city, village, township, or county. **It doesn't say includes but is not limited to. There is no et cetera at the end of that list. There's nothing else that indicates that this list is meant to be**

> **inclusive of anything other than the four things that are included in the list which are city, village, township, or county.**
>
> The cases where the courts have expanded that in any way have been cases where a -- where an entity that's under the control or the authorization of a city, village, township, or county has moved to restrict guns on its premises; but the schools are not any part or under the authority of a city, village, township, or county and; therefore, I don't find that MCL 123.1101 has any bearing in this case. [MSD Tr, p 20 (emphasis added).]

The Michigan Court of Appeals recognized this lack of express preemption in *CADL*, 298 Mich App at 231. In *CADL* the Capital Area District Library ("CADL") brought suit seeking to validate and enforce its weapons policy, which banned all weapons from the library "to the fullest extent permitted by law." Defendant, Michigan Open Carry, Incorporated, argued that CADL's weapons policy was preempted by state law. Because CADL was not owned by a city, village, township, or county, but rather jointly established by both a city and a county, CADL was not "expressly barred by MCL 123.1102 from imposing firearms regulations." *Id.* at 231. While *CADL* involved the right of a district library to enact a policy banning dangerous weapons, including firearms, from the library, the Court's analysis with respect to express preemption applies to school districts as well. A school district is not specifically listed as a local unit of government in the Michigan Firearms and Ammunition Act, nor owned by one of the entities listed. See MCL 123.1101(b). Further, the policies at issue **do not directly conflict with state statutes.** Therefore, a school district is not "expressly barred by MCL 123.1102 from imposing firearms regulations." See *CADL*, 298 Mich App at 231.

II. THE STATE LEGISLATURE HAS NOT COMPLETELY PREEMPTED THE FIELD OF FIREARM REGULATION SUCH THAT ANN ARBOR PUBLIC SCHOOLS CANNOT PROMULGATE POLICIES REGULATING FIREARMS ON SCHOOL PROPERTY IN ORDER TO PROTECT THE SAFETY AND WELFARE OF ITS STUDENTS

Appellants assert that *CADL* governs this case. However, the rationale in *CADL* is distinguishable from the instant matter and school districts are distinguishable from district libraries in several ways.

The Court of Appeals in *CADL* correctly observed that the district library at issue was jointly established by two entities, a city and a county, which themselves are considered "local units of government" under the Michigan Firearms and Ammunition Act. See MCL 123.1101(a). The Court further observed that most libraries are formed by cities, villages, townships, and counties. Thus, extending the scope of the statute to an entity formed by other entities expressly identified as "local units of government" is reasonable. However, school districts are not formed or established by a "local unit of government" and, therefore, it would not be reasonable to extend the scope of the statute to preempt school districts.

The Michigan Firearms and Ammunitions Act provides that a local unit of government shall not further regulate the possession of pistols or other firearms, "except as otherwise provided by federal law or a law of this state." MCL 123.1102. Unlike libraries, school districts have the authority to prohibit firearms on school property pursuant to the Revised School Code, which expressly confers upon school districts the powers and duties (A) to provide for the safety and welfare of students, (B) to educate students, and (C) to regulate visitor access to school property. See MCL 380.11a(3)(a), (b). As discussed above, federal and state laws have established "gun free school zones" and "weapon free school zones," respectively. See 18 USC 922(q)(2)(A); MCL 750.237a(4). There are no comparable provisions in federal or state law for

district libraries. State law also includes a "school or school property" on its list of premises on which an individual cannot carry a concealed pistol, while district libraries are not included on that list. See MCL 28.4250(1). Based on the special protections afforded to school property by statute, the federal and state legislatures clearly intended to provide greater protection for schools than for district libraries. This authority is discussed further below.

Appellants assert that field preemption applies and that the District's policies are preempted and therefore unenforceable. Appellants argue that the decision in *CADL*, 298 Mich App 220, addresses this and that no further inquiry is necessary. The District disagrees.

In *CADL*, 298 Mich App 220, the Court considered the issue of field preemption. The Court found that CADL was not expressly barred by the Michigan Firearms and Ammunition Act from imposing firearms regulations, since district libraries did not meet the definition of a "local unit of government" under the statute. Nonetheless, the Court found that CADL was a "quasi-municipal corporation" and was subject to preemption by the state. Although the Court of Appeals cited to *Board of Education of the School District of the City of Detroit v Michigan Bell Telephone Company*, 51 Mich App 488; 215 NW2d 704 (1974) and *Attorney General v Lowrey*, 131 Mich 639; 92 NW 289 (1902) for the principle that school districts are quasi-municipal corporations, the Court in *CADL* did not explicitly apply its rationale to school districts. Further, the rationale in *CADL* does not apply to school districts, as school districts are distinguishable from district libraries in several ways.

Finally, access to school property is more restricted than access to district libraries. As discussed below, school environments imply limitations on even the most fundamental rights. See *Tinker v Des Moines Indep Comm Sch Dist*, 393 US 503, 512-514; 89 S Ct 733; 21 L Ed 2d 731 (1969). School officials have great authority to regulate access to school property "in order

to preserve order in the educational process or to protect students from potential harm." *Mejia v Holt Pub Sch*, 2002 US Dist LEXIS 12853 (WD Mich, 2002) (attached as ***Exhibit 4***). School districts often use this authority to promulgate policies that require visitor sign-in or that limit visitor access to certain areas of a school building, particularly while class is in session. In contrast, district libraries are open to the general public, with members of the public frequently coming and going with few limits on their access to the premises and the books and materials contained therein. It follows that school districts have greater authority than district libraries when it comes to regulating firearms on their premises.

A. The Ann Arbor Public Schools Are Not Formed by a "Local Unit of Government"

MCL 123.1101(b) defines the term "local unit of government" to mean "a city, village, township, or county." In *CADL*, the Court of Appeals observed that the district library was established by a city and a county and therefore "it is swept within the reach of MCL 123.1102, which expressly prohibits the enactment of any regulation relating to the possession of firearms by 'local units of government.'" *Ann Arbor Public Schools*, __ Mich App at __; slip op at 5, citing *CADL*, 298 Mich App at 237.] The *CADL* Court concluded that because the city and the county that formed the district library were expressly preempted from regulating firearms, "it would make no sense to permit their stepchild—a library—from doing so." Unlike the district library in *CADL*, schools are not formed or operated by "cities, villages, townships or counties." Indeed, "Leadership and general supervision over all public education, including adult education and instructional programs in state institutions [. . .] is vested in a state board of education." Const 1963, art 8, § 3. Accordingly, it would not be reasonable to extend the scope of the statute beyond its plain language to preempt school districts.

The language of MCL 123.1101 is unambiguous and preempts local units of government as defined by the statute. It is a longstanding cannon of statutory interpretation that when statutory language is unambiguous, the court gives" the words their plain meaning and appl[ies] the statute as written." *Rowland v Washtenaw County Road Com'n,* 477 Mich 197, 202; 731 NW2d 41 (2007). In *Rowland,* the Court concluded that a statute was "straightforward, clear, unambiguous, and not constitutionally suspect," and therefore "it must be enforced as written." *Id.* at 219. The Court opined:

> "The Legislature is presumed to have intended the meaning it has plainly expressed, and if the expressed language is clear, judicial construction is not permitted and the statute must be enforced as written." *Id.* at 219, quoting *Robertson v DaimlerChrysler Corp,* 465 Mich 732, 748; 641 NW2d 567 (2002).

Similarly, the language of MCL 123.1101 is straightforward, clear, unambiguous, and not constitutionally suspect. The Legislature expressly defined the term "local unit of government" to mean "a city, village, township, or county." The statute does not include schools in the definition of local unit of government. Accordingly, the statute must be enforced as written.

B. School Districts Have the Authority to Prohibit Firearms on School Property Pursuant to Their Power and Duty Under the Revised School Code to Provide for the Safety and Welfare of Students

The Legislature has conferred upon school districts broad powers, including the authority and the duty to "provid[e] for the safety and welfare of pupils while at school or a school sponsored activity." The Revised School Code confers upon school districts the specific power, right, and duty to adopt policies that ensure the safety and welfare of their students:

> **A general powers school district** has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, except as provided by law, **may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to**, all of the following:

> (a) Educating pupils. In addition to educating pupils in K-12, this function may include operation of preschool, lifelong education, adult education, community education, training, enrichment, and recreation programs for other persons.
>
> (b) **Providing for the safety and welfare of pupils** while at school or a school sponsored activity or while en route to or from school or a school sponsored activity. [MCL 380.11a(3) (emphasis added).]

The Revised School Code specifically grants school districts the power and duty to provide for the safety and welfare of students and to educate students. MCL 380.11a(3).

This is unlike the general powers conferred upon district libraries. In *CADL,* 298 Mich App 220, the Court considered whether CADL was granted the authority under the District Library Establishment Act to promulgate a weapons policy. The Court determined that the Act grants ***general*** powers to the governing boards of district libraries, like the authority to "supervise and control district library property," "adopt bylaws and regulations […] governing the board and the district library," and "do any other thing necessary for conducting the district library service." MCL 397.182(1). Unlike school districts, district libraries are not granted the ***specific*** authority to provide for the safety and welfare of patrons.

Courts have recognized that the Revised School Code vests specific authority in school districts to adopt policies to ensure the safety and welfare of their students while at school. For example, in *Liebau v Romeo Community Schools,* unpublished opinion *per curiam* of the Court of Appeals, issued July 30, 2013 (Docket No. 306979) (attached as ***Exhibit 5***), the defendant school district implemented a policy banning all peanut products at an elementary school because a student had a life-threatening allergy. The plaintiff, who was a parent of another student, opposed the nut-free policy and provided notice that she would not abide by it. Assessing the school district's authority under the Revised School Code, the Court stated:

> This statute vests broad authority in school districts to adopt policies to ensure the safety and welfare of its students while at school. Thus, the school district had the authority to adopt a school-wide ban […] given its determination that the ban was necessary for student A's safety and welfare while at school. [*Liebau*, unpub op at 12.]

The plaintiff argued she had a right to relief under MCL 380.10, which grants parents the right to "determine and direct the care, teaching, and education of their children." The Court resolved the apparent tension between the rights afforded to parents under MCL 380.10 and the school district's authority under MCL 380.11a(3) in accordance with the following rules of construction:

> Apparently conflicting statutes should be construed, if possible, to give each full force and effect. The object of the in pari materia rule is to effectuate legislative purposes when statutes are harmonious. If two statutes lend themselves to a harmonious construction, that construction controls. Statutes are in pari materia when they relate to the same subject matter and share a common purpose. In other words, statutes that are in pari materia must be read together, as a whole, to fully reveal the Legislature's intent. However, to the extent the two statutes at issue are in actual conflict, and are in pari materia, the more specific statute controls. [*Id*. at 15 (internal citations omitted).]

The Court determined it was "apparent that the Legislature has recognized the rights of parents to be involved in the education of their child, subject to the school's broad authority to provide for the safety and welfare of its students while at school." *Id*. at 16. Therefore, the Court concluded that MCL 380.10 did not infringe on the school district's authority to regulate what food items a child may bring to school in the exercise of its obligation to provide for the safety and welfare of other students. In doing so, the Court resolved competing Revised School Code provisions in favor of school district authority to provide for the safety and welfare of students. The authority of school districts to provide for the safety and welfare of students is even more compelling in the instant case, where state law is silent with regard to the open carry of firearms on school property.

Other courts have similarly taken a broad view of the authority of school districts to enact policies intended to address school safety, finding "that schools have an important interest in maintaining the safety and security of school grounds, as well as students, staff, parents, and other members of the public who come onto school property." See *Ritchie v Coldwater Comm Schs*, 947 F Supp 2d 791, 813 n 9 (WD Mich, 2013).

There is no more important safety measure than a prohibition on weapons in schools. As noted above, there have been approximately 159 school shootings since the 1999 mass shooting at Columbine High School. In the two years following the December 14, 2012 mass shooting at Sandy Hook Elementary, there were approximately 94 school shootings, including fatal and nonfatal assaults, suicides, and unintentional shootings.[7] Acknowledging the concerns raised by weapons in schools, the MDE has included a "weapon on campus" among its list of emergencies, along with other serious safety concerns such as fires, tornados, earthquakes, and chemical, biological, or nuclear exposure. *MI Ready Schools: Emergency Planning Toolkit*, Michigan Department of Education, p 4 (2011).[8]

Pursuant to the Revised School Code, school districts are authorized to prohibit firearms on school property as a power incidental and appropriate to the performance of functions related to protecting the safety and welfare of students. Unlike in *Liebau*, where there were two competing statutory provisions, this authority is particularly compelling in the instant case, where state law is silent with regard to the open carry of firearms on school property. Accordingly, schools have the authority and duty to prohibit open carry of firearms on school grounds pursuant to their rights under the Revised School Code.

[7] *Analysis of School Shootings*, Everytown for Gun Safety, *supra*, at 1.
[8] Available at http://michigan.gov/documents/safeschools/MI_Ready_Schools_Emergency_Planning_Toolkit_370277_7.pdf.

C. Application of the *Llewellyn* Factors Does Not Support a Finding that State Law Has Occupied this Field With Respect to School Districts

This Court should conclude that school districts are not preempted from enacting policies that regulate the possession of firearms on school property as a result of state regulation in the field. Field preemption precludes a municipality from enacting an ordinance "if the state statutory scheme pre-empts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, even where there is no direct conflict between the two schemes of regulation." *Llewellyn*, 401 Mich at 322. Courts consider four factors when determining if a local regulation is precluded by field preemption:

> First, **where the state law expressly provides that the state's authority to regulate in a specified area of the law is to be exclusive**, there is no doubt that municipal regulation is pre-empted.
>
> Second, pre-emption of a field of regulation may be implied upon an examination of **legislative history**.
>
> Third, **the pervasiveness of the state regulatory scheme** may support a finding of pre-emption. While the pervasiveness of the state regulatory scheme **is not generally sufficient by itself to infer pre-emption**, it is a factor which should be considered as evidence of pre-emption.
>
> Fourth, **the nature of the regulated subject matter** may demand exclusive state regulation **to achieve the uniformity necessary to serve the state's purpose or interest.**
>
> [*Howell Twp v Rooto Corp*, 258 Mich App 470, 476; 670 NW2d 713 (2003), quoting *Rental Prop Owners Ass'n of Kent Co v Grand Rapids*, 455 Mich 246, 257; 566 NW2d 514 (1997) (internal quotation marks omitted) (emphasis added).]

First, the state law does not expressly provide that the state's authority to regulate is to be exclusive. Rather, the statute provides that the state's authority to regulate firearms is to be exclusive *with respect to cities, villages, townships, and counties.* The Michigan Firearms and Ammunition Act provides:

> **A local unit of government** shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the

> ownership, registration, purchase, sale, transfer, transportation, or possession of pistols or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, **except as otherwise provided by federal law or a law of this state.**
>
> [MCL 123.1102 (emphasis added).]

The Firearms and Ammunition Act expressly defines "a local unit of government" as "a city, village, township, or county." MCL 123.1101(b). While the statute expressly provides that cities, villages, townships, and counties may not regulate the possession of pistols or other firearms except as otherwise provided by state or federal law, the statute does not expressly prohibit school districts from enacting such regulation. See MCL 123.1102.

Matters of statutory interpretation are reviewed de novo. *Baumgartner v Perry Pub Sch*, 309 Mich App 507, 522; 872 NW2d 837 (2015). When interpreting a statute, a court's "primary task is to discern and give effect to the intent of the Legislature." *Ford Motor Co v Treasury Dep't*, 496 Mich 382, 389; 852 NW2d 786 (2014); *Local Area Watch v City of Grand Rapids*, 262 Mich App 136, 145; 683 NW2d 745 (2004). **"[A] clear and unambiguous statute leaves no room for judicial construction or interpretation."** *Local Area Watch*, 262 Mich App at 145 (emphasis added). The first step in interpreting a statute is to examine the language of the statute itself. *Ford Motor Co*, 496 Mich at 389. "The words of a statute provide the most reliable evidence of the Legislature's intent." *US Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 773 NW2d 243 (2009).

> "When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; **the proper role of a court is simply to *apply* the terms of the statute to the circumstances in a particular case."**
>
> [*Local Area Watch*, 262 Mich App at 145 (italics in original).]

"[T]he Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *Ford Motor Co*, 496 Mich at 389.

> Any other nontextual approach to statutory construction will necessarily invite judicial speculation regarding the probable, but unstated, intent of the Legislature with the likely consequence that a court will impermissibly substitute its own policy preferences.
>
> [*People v McIntire*, 461 Mich 147, 153-154; 599 NW2d 102 (1999).]

The plain language of the Michigan Firearms and Ammunition Act designates four entities as local units of government – cities, villages, townships, and counties. See MCL 123.1101(b). The words of this statute are evidence of the Legislature's intent to restrict only those four entities from further regulating firearms. See *US Fidelity Ins,* 484 Mich at 13. As Circuit Court Judge Kuhnke noted in her decision granting the District's motion for summary disposition, "the Legislature knows very well [. . .] how to include schools if it means to and at 123.1101(b) local unit of government is specifically defined as a city, village, township, or county." MSD Tr, p 20 (emphasis added). Given the unambiguous language of the statute, the *CADL* Court unnecessarily speculated regarding the Legislature's intent when it applied a field preemption analysis. In *CADL*, 298 Mich App at 241, the Court concluded that a district library was precluded from enacting a policy that banned firearms from the library. The district library at issue was jointly established by two entities, a city and a county, which themselves are considered "local units of government" under the Michigan Firearms and Ammunition Act. See MCL 123.1101(a). The Court further observed that most libraries are formed by cities, villages, townships, and counties. See *id.* at 231. Thus, the Court's decision in *CADL* applying the statute to a district library, which was jointly established by a city and a county, was reasonable given the plain language of the statute. The Legislature knows how to include schools if it so intends. The Legislature has defined the term "local unit of government" in other statutes; some include

definitions of this term and some do not; some definitions include school districts and some do not. For example, the Environmental Remediation Act defines the term to mean "a county, city, township, or village, an agency of a local unit of government, an authority or any other public body or entity created by or pursuant to state law." MCL 324.20101(bb). The Uniform Forfeiture Act defines the term to mean "a village, city, township or county." MCL 28.117. The Joint Water Supply and Waste Disposal Systems Act defines the term to mean "a village, a city, a school district, an intermediate school district, a public school academy, a township, a county, a county road commission, an authority or organization of government established by law that may expend funds of the authority or organization." MCL 141.422d(4). The Property Assessed Clean Energy Act defines the term to mean "a county, township, city, or village." MCL 460.933(e). The Michigan Campaign Finance Act defines the term to mean "a district, authority, county, city, village, township, board, school district, intermediate school district, or community college district."

Under the doctrine of *expressio unius est exclusio alterius*, "the express mention in a statute of one thing implies the exclusion of other similar things." *Bradley v Saranac Bd of Educ*, 455 Mich 285, 298; 565 NW2d 650 (1997); *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 159; 596 NW2d 208 (1999). For example, in *Bradley*, the Michigan Supreme Court noted that the Freedom of Information Act ("FOIA) specifically exempts from disclosure the personnel records of law enforcement personnel. *Bradley*, 455 Mich at 298-299.

> Our conclusion that the plaintiffs' personnel records are not exempt under the FOIA is bolstered by the absence of any indications that the Legislature intended a different result. As the Court of Appeals noted below, the Legislature specifically exempted the personnel records of law enforcement agencies from disclosure. This Court recognizes the maxim *expressio unius est exclusion alterius;* that the express mention in a statute of one thing implies the exclusion of other similar things. **Because the Legislature realized that the FOIA could require the disclosure of the personnel records of law enforcement personnel,**

> **the conclusion that the Legislature rejected the opportunity to extend this exemption to other public employees is inescapable.** Additionally, **accepting the appellants' interpretation of the FOIA would render the law enforcement exemption redundant, thus violating another rule of statutory construction: namely, that no part of a statute should be treated as mere surplusage or rendered nugatory.** [*Id.* at 299 (emphasis added).]

Accordingly, the Court in *Bradley* concluded that FOIA does not exempt the personnel records of other public employees. The Court opined that the Legislature had an opportunity to extend the exemption of law enforcement personnel records, but rejected that opportunity. *Id.*

In the instant case, the Legislature specifically identified four types of entities as local units of government in the Michigan Firearms and Ammunition Act – cities, villages, townships, and counties. See MCL 123.1101(b). The express inclusion of these entities implies the exclusion of others, like school districts. See *Bradley*, 455 Mich at 298; *Rembert*, 235 Mich App at 159. Therefore, the first *Llewellyn* factor weighs against finding that school districts are preempted from regulating firearms.

Second, the legislative history cited by Appellants does not support precluding school districts from further regulating firearms. Appellants cite the Second Analysis for 1991 House Bill 5437 in arguing that this factor supports a finding of field preemption. However, this analysis discusses concerns about gun control *ordinances* and the then-authority of local units of government to "enact and enforce gun control ordinances." (Appellants' Brief, p 18). Appellants state that the 1001 Legislative Analysis provides "a description of efforts by several municipalities to enact gun control ordinances." The school district is not a municipality. Further, the District does not have the authority to enact or enforce ordinances. School districts cannot criminalize behavior. Appellants point to no other legislative history to support their position. Therefore, the Court of Appeals correctly concluded that this factor does not support preemption.

Third, the pervasiveness of the state regulatory scheme is not sufficient to infer preemption. See *Howell Twp*, 258 Mich App at 476. Although firearms are pervasively regulated in Michigan, pervasiveness, by itself, is generally not sufficient to infer preemption. *Id.*; see also *Rental Prop Owners*, 455 Mich at 257. The Court of Appeals addressed the "panoply of firearms" and concluded:

> Here, relevant segments of a multifaceted statutory framework evince the Legislature's intent to *prohibit* weapons in schools, rather than to rein in a district's ability to control the possession of weapons on its campus.
>
> Among the statutes regulating firearms compiled by the legislative service bureau are **26 different laws specifically referencing "weapon free school zones." These four words telegraph an unmistakable objective regarding guns and schools; indeed, we find it hard to imagine a more straightforward expression of legislative will. The Legislature contemplated that this repeatedly invoked phrase would be interpreted to mean exactly what it says—no weapons are allowed in schools.** Viewing the AAPS policies against this statutory backdrop, we infer that firearm policies consistent with the "weapon free school zone" concept are unobjectionable. Field preemption analysis does not permit us to ignore this statutory language simply because there are many statutes regulating firearms. To the contrary, the pervasiveness of the Legislature's use of the phrase "weapon free school zone' presses against the preemption of a district policy affirming that its schools will remain weapon-free." [*Ann Arbor Public Schools*, __ Mich App at __; slip op at 9 (emphasis added).]

The references to "weapon free school zones" demonstrate the Legislature's intent. There is no comparable "weapon free district library" statute.

As discussed above, the Legislature has expressly preempted specific governmental entities from further regulating firearms – cities, villages, townships, and counties. See MCL 123.1101(b). This list does not include school districts. The unambiguous language in the statute indicates exactly how exclusive the state's authority to regulate firearms is, and "[t]he words of a statute provide the most reliable evidence of the Legislature's intent." *US Fidelity Ins*, 484 Mich at 13.

Fourth, Appellants insist that a "patchwork [of] local ordinances creating unfair prosecution of persons carrying licensed pistols" will result. However, Appellants fail to acknowledge that school districts **cannot enact ordinances and cannot criminalize behavior.** The nature of the subject matter at issue does not demand exclusive state regulation. See *Howell Twp*, 258 Mich App at 476. In fact, the nature of the subject matter requires that school districts have the flexibility to enact policies that fit the particular circumstances of their district, the population they serve, and the distinct problems they face. As a general rule, regulation that goes further than a State law does not conflict with the State law. *USA Cash*, 285 Mich App at 267; *Walsh*, 385 Mich at 636.

This subject matter demands additional regulation when schools are involved. As discussed above, schools are sensitive places. *Heller*, 554 US at 626. The United States Supreme Court recognized this fact, as have the United States and Michigan Legislatures by establishing "gun free school zones" and "weapon free school zones," respectively. See 18 USC 922(q)(2)(A); MCL 750.237a(4). There are no comparable provisions in federal or state law for district libraries. While schools and school property are included in MCL 28.425o(1) as premises on which an individual cannot carry a concealed pistol, a district library is not included on this list. The special protections afforded to school property by the federal and state legislatures indicate an intent to provide schools with greater protection than district libraries.

Courts, like schools, are sensitive places that require additional safety measures and greater regulation of firearms. Nonetheless, individuals with CPLs could, under Michigan law, legally carry a concealed or unconcealed weapon into a court before the Michigan Supreme Court adopted Administrative Order No. 2001-1. The Michigan Penal Code prohibits individuals from possessing a firearm in a court. MCL 750.234d(1)(c). However, the Penal Code makes an

exception for individuals licensed to carry a concealed weapon. MCL 750.234d(2)(c). To preclude the presence of any firearms in courtrooms, the Michigan Supreme Court further regulated the possession of firearms and banned all weapons in "any courtroom, office, or other space used for official court business or by judicial employees" with the adoption of Administrative Order No. 2001-1. The District asks for the opportunity to do the same in order to ensure the safety of its students, just as the Michigan Supreme Court Administrative Order provides to the Court for its visitors, litigants, and staff.

Appellants cite to *City of Brighton v Township of Hamburg*, 260 Mich App 345, 346; 677 NW2d 349 (2004) to support their argument that differing school district policies will create "confusion" and will "burden" the police and the public. In *City of Brighton*, the Court of Appeals addressed a township ordinance that imposed stricter limitations on surface water discharge than those imposed by the state. In ruling that the local ordinance was preempted, the Court stated: "[t]o allow local units of government such as townships, counties or cities to enact discharge limits concerning discharges into waters ***located within or passing through*** these jurisdictions would result in statewide confusion concerning conflicting discharge limits." The conduct regulated in *City of Brighton* affected more than one municipality because the surface waters pass through numerous local units of government. *City of Brighton*, 260 Mich App at 348. If discharge levels could be set by local units of government, "certain discharges could be found to violate certain discharge limits enacted by certain local units of government and not violating other local units of government's discharge limits. *Id.*

The same concerns do not exist with regard to local school district policies. School district policies are distinguishable from the discharge ordinances in *City of Brighton* in many ways. The policies enacted by one school district have little to no impact on the policies enacted

by another school district. Local school district policies will not create an unfair burden on the courts, prosecutors or police as school districts cannot enact ordinances and cannot criminalize behavior. Moreover, the firearms legislation is silent with regard to carrying a weapon onto school property. As discussed more thoroughly below, schools exercise significant control over each visitor that accesses school property and districts across the state have a multitude of differing policies and procedures for visitors. Generally, the public is not entitled to freely access school property, especially during school hours. Schools have policies in place that visitors—including parents—are required to follow. School visitor policies differ from district to district and have not resulted in the mass chaos and confusion that Appellants are so concerned about.

D. School Districts Have the Duty and Authority to Regulate Visitor Access to School Property

It is of the utmost importance that school districts have the ability to regulate access to school property.

i. The Second Amendment Right to Bear Arms is not Without Limitation

Neither the United States Constitution nor the Michigan Constitution give individuals an unfettered right to possess firearms. Where state law is silent with regard to the open carry of firearms on school property, coupled with a school district's authority to provide for student safety and welfare, educate students without material disruption, and regulate visitor access to school property, this Court should allow the District's policies to stand.

The Second Amendment to the United States Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." US Const, Am II. The Michigan Constitution states, "Every person has a right to keep and bear arms for the defense of himself and the state." Mich Const 1963, art I, § 6. These provisions have been interpreted to protect an individual's right to bear

arms. Derived from the right to bear arms is the right to "open carry." The United States Supreme Court clearly stated that the right to carry and bear arms under the Second Amendment is not unlimited. *District of Columbia v Heller*, 554 US 570, 626-627, 128 S Ct 2783, 171 L Ed 2d 637 (2008). In *Heller*, the Supreme Court stated:

> Like most rights, the **right secured by the Second Amendment is not unlimited**. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, **nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms** by felons and the mentally ill, or laws forbidding the carrying of firearms **in sensitive places such as schools** and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. [*Id*. at 626 (emphasis added) (internal citations omitted).]

The Michigan Court of Appeals has cited to *Heller* with approval. *See e.g.*, *People v Deroche*, 299 Mich App 301, 306-307; 829 NW2d 891 (2013):

> The Supreme Court therefore recognized that the right to carry and bear arms under the Second Amendment is not unlimited. [*Heller*, 554 US] at 626-627. . . . Notably, the Supreme Court clarified in an accompanying footnote that in providing these examples, "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." *Id.* at 627 n 26.

This Court, like the Supreme Court in *Heller*, should recognize that schools are sensitive places and allowing individuals to exercise their Second Amendment rights by open carrying firearms in schools is an unreasonable outcome for our society.

ii. Courts Have Consistently Found that School Districts Have the Authority to Place Limits on Even the Most Fundamental Rights in Order to Prevent Material Disruption to the Educational Process

In order to effectively educate students, school districts endeavor to provide a learning environment that is free from material disruption. Along with the authority to provide for the

safety and welfare of students, the Revised School Code gives school districts the authority to exercise powers incidental or appropriate to the performance of functions related to educating students, in accordance with the following:

> **A general powers school district** has all of the rights, powers, and duties expressly stated in this act; may exercise a power implied or incident to a power expressly stated in this act; and, except as provided by law, **may exercise a power incidental or appropriate to the performance of a function related to operation of the school district in the interests of public elementary and secondary education in the school district, including, but not limited to**, all of the following:
>
> (a) **Educating pupils.** In addition to educating pupils in grades K-12, this function may include operation of preschool, lifelong education, adult education, community education, training, enrichment, and recreation programs for other persons. [MCL 380.11a(3) (emphasis added).]

In order to effectively educate students, courts have found that schools may place limits on even the most fundamental rights. In *Tinker*, 393 US at 504, students were suspended for violating the school dress code after wearing black armbands to protest the Vietnam War. Analyzing the treatment of First Amendment rights in a school environment, the United States Supreme Court stated:

> A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfering with the requirements of appropriate discipline in the operation of the school" and without colliding with the rights of others. **But conduct** by the student, in class or out of it, **which for any reason – whether it stems from time, place, or type of behavior – materially disrupts class work or involves substantial disorder or invasion of the rights of others is, of course, not immunized** by the constitutional guarantee of freedom of speech. [*Id.* at 512-513 (emphasis added) (internal citations omitted).]

The Court determined that wearing armbands to make a political statement was entitled to comprehensive protection under the First Amendment, absent a showing that the conduct would for any reason materially disrupt class work or cause substantial disorder or invasion of the rights

of others. *Id.* at 512-514. While the Court sided with the students, it is evident that certain limitations may be put on fundamental rights in a school environment if there is reason to believe that manifestation of those rights will cause material disruption to the educational process. See *id*.

The presence of a weapon, such as a firearm, is classified as an emergency by the MDE, and therefore would cause a material disruption to the education process. *MI Ready Schools: Emergency Planning Toolkit,* Michigan Dept of Educ, p 3 (2011). MDE's Emergency Planning Toolkit further provides three strategies school districts may use to respond to an emergency situation: evacuation; lockdown; or shelter-in-place. *Id*. at 21. Regardless of the type of emergency response a school district implements, the response will result in a material disruption to the educational process, as it will break students and staff from their daily routine and delay the educational process. Furthermore, most students, particularly those at the elementary and middle school level, are not accustomed to seeing individuals open carrying a firearm, unless that individual is in a police uniform or in other special circumstances. The presence of an individual open carrying a gun in a school places students on alert, causes a distraction, and results in disorder that disrupts teachers' lessons, children's attentions, and the ability of students to learn.

Accordingly, pursuant to the Revised School Code, school districts are authorized to prohibit firearms on school property as a power incidental and appropriate to the performance of functions related to educating students.

iii. School Districts are Allowed to Regulate Visitor Access to School Property

Federal district courts have held that school districts have great authority to regulate access to school property. In *Mejia*, 2002 US Dist LEXIS 12853 at *2, a parent was caught masturbating in a school parking lot while waiting to pick up his son. The parent was acquitted

of criminal charges, but the school district banned him from entering school property or attending school functions nonetheless. *Id.* at *2-3. The parent brought suit claiming that the school district violated his due process rights by depriving him of the fundamental right to participate in his child's education without affording him a hearing. *Id.* at *4-5. As to the right of a school to ban parents and visitors from school property, the United States District Court for the Western District of Michigan found:

> School officials have the authority to control students and school personnel on school property, and also have the authority and responsibility for assuring that parents and third parties conduct themselves appropriately while on school property. While the specific contours of the authority and responsibility of school officials are defined by state law, such officials should never be intimidated into compromising the safety of those who utilize school property. [*Id*. at *12-13, *quoting Lovern v Edwards*, 190 F3d 648, 655 (CA 4, 1999).]

Accordingly, the Court concluded:

> A school may ban a person, including a parent, from going onto school property in order to preserve order in the educational process or to protect students from potential harm without violating any fundamental right to go onto or access school property. [*Id.* at *14.]

As to a parent's right to control the education of his or her child, the Court found that case law had established that parents have a right to make the decision about where their children will be educated. *Id.* at *14-15. However, those cases "do not extend or create a right of parents to go onto school property for purposes of participating in the child's education." *Id.* at *17. Accordingly, the Court declined to hold that parents have a fundamental right to participate in their children's education through physical access to school property, and it dismissed the case. See *id.* at *21.

In *Ritchie v Coldwater Comm Schs*, 2012 US Dist LEXIS 95566 (WD Mich, 2012) (attached as ***Exhibit 6***), the Court also addressed the right of school districts to restrict parent and visitor access to school property. In *Ritchie*, a parent attended several board meetings to

complain to the school board that a teacher pulled his daughter's hair. *Id.* at *1-2. He was stopped from speaking at one board meeting, forcibly removed on two other occasions, and was restricted from accessing school property. *Id.* at *2. The parent brought First Amendment and due process claims against the school district. *Id.* at *3. As to the First Amendment claims, the Court found that the school board could place time, place, and manner restrictions on public board meetings. *Id.* at 30. Addressing the due process claim for limiting the parent's access to school property, the Court stated:

> To the extent that [the parent's] claim is based on a ban or restrictions precluding him from accessing school property – in contexts other than attending School Board meetings open to the public – he fails to state a due process claim because **he does not have a liberty interest in accessing school property** […] **Schools have broad discretion to limit parent and third-party access to school property in order to ensure student safety and prevent disruptions in the educational process** […] **Moreover, citizens do not have an unfettered right of access to school property simply because it is public**. [*Id.* at 49-50 (emphasis added).]

Having found no fundamental right to access school property, the Court dismissed the due process claim. *Id.* at 51, 54. Thus, school districts may limit parent and third party access to school property in order to ensure student safety and to prevent disruptions in the educational process. *Id.* at 49-51; *Mejia*, 2002 US Dist LEXIS 12853 at *12-14.

Accordingly, school districts are authorized to prohibit firearms on school property pursuant to the right to limit parent and third party access in order to ensure student safety and to prevent disruptions in the educational process.

III. THE COURT OF APPEALS CORRECTLY RULED THAT AAPS WEAPONS POLICIES ARE CONSISTENT WITH THE LEGISLATURE'S INTENT TO MAINTAIN "WEAPON FREE SCHOOL ZONES" AND IS NOT PREEMPTED

The Circuit Court and the Court of Appeals properly addressed the issue of field preemption and the Supreme Court's decision in *People v Llewellyn*, 401 Mich 314; 257 NW2d

902 (1977). The Court of Appeals opinion in the instant matter does not conflict with the decision in *CADL*.

Plaintiffs cite to *Michigan Coalition for Responsible Gun Owners v City of Ferndale*, 256 Mich Ap 401; 662 NW2d 864 (2003) for the assertion that "the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken." However, Appellants ignore the fact that *Michigan Coalition* addressed a ***city*** ordinance which made public buildings gun free zones. The ordinance was enacted by one of the "local units of government" expressly listed by MCL 123.1101(b).

The Appellants further argue that the court of Appeals in *CADL* reached its decision because the district library was an *inferior* level of government, not because it was created by a city and county. However, as the Court of Appeals in the instant matter noted, the "close connection between district libraries and the cities or counties that established them informed *CADL's* analysis of the *Llewellyn* factors." [*Ann Arbor Public Schools*, __ Mich App at __; slip op at 6.]

Moreover, as addressed more thoroughly above, the Legislature conferred broad powers upon local school districts to educate pupils and to provide for the safety and welfare of pupils while at school or a school sponsored activity.

STATEMENT REGARDING ORAL ARGUMENT

Appellees submit that the factual and legal issues in this appeal are sufficiently complex, such that this case should not be selected for decision without oral argument, because the Court will be aided in its decision if it hears oral arguments from counsel.

REQUEST FOR RELIEF

Wherefore, the District respectfully requests that this Honorable Court affirm the decision of the Court of Appeals and the trial court granting their motion for summary disposition and dismissing Appellants' complaint with prejudice, and award such further relief as this Court deems just and reasonable, including costs and attorney fees.

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4846-4623-9043, v. 1